Joanna Kozera v Polish Judicial Authority

High Court of Justice Queen's Bench Division the Administrative Court

[2018] EWHC 3338 (Admin)

Before: Mr Justice Garnham

Wednesday, 7 November 2018

Representation

Mr G. Hepburne Scott (instructed by Bark & Co.) appeared on behalf of the Appellant.

Ms C. Brown (instructed by CPS Extradition Unit) appeared on behalf of the Respondent.

Mr Justice Garnham:

1 The appellant, Joanna Lucyna Kozera appeals against the decision of District Judge Goldspring dated 29 June 2018, to order her extradition to Poland pursuant to a conviction European arrest warrant issued by the Regional Court in Zielona Gora, Poland, on 22 September 2014. The EAW relates to seven frauds against banks between 24 January and 3 March 2006 in respect of loans for various pieces of electrical equipment. The total value of the equipment involved was £1,200. A sentence of 2 years' imprisonment was imposed. It was initially suspended, but it was activated on the appellant's failure to make payments ordered by the Polish court. It follows that the 2 years remains to be served.

2 The appellant appeals on the single ground that extradition would be a disproportionate interference with her Article 8 ECHR rights and those of her family. She does so with the permission of Sir Ross Cranston, sitting as a High Court Judge, granted on 18 September 2016.

3 The appeal is brought under s.26 of the 2003 Extradition Act . As is well known, the application of Article 8 ECHR in the context of extradition appeals has been considered by the Supreme Court in *Norris v United States of America [2010] UKSC 9* , *HH v Italy [2012] UKSC 25* and by the Divisional Court in *Celinski v Poland [2015] EWHC 1274 (Admin)* and this case falls to be considered against the principles set out in those three cases.

4 The district judge prepared a thorough and careful judgment and the approach he adopted has not been subject to significant criticism. The criticism instead is directed to his final decision, which it is said was wrong, that being the test identified by the Divisional Court in *Celinski* . After a careful recitation of the chronology in this matter, the relevant legal principles and the evidence heard by

the court, the district judge made relevant findings on the issues before him. Then referring to *Celinski* , he carried out the balancing exercise between factors in favour of extradition and factors in favour of discharge. As to the former, he noted the "constant and weighty public interest in the UK honouring its extradition treaties", the need for respect for the autonomy of Polish courts, the fact that the appellant is a fugitive and the public interest in honouring extradition requests.

5 In favour of discharge, the district judge noted that the requested person had been in the UK since at least 2009, she has built her life here and the UK has become her home. He noted that she is the primary carer of her two-year-old son, Matt, who lives with her and her partner. He also noted that the appellant regularly sees and cares for her 13-year-old daughter who lives with the appellant's mother. The district judge said in enumerating the factors in favour of discharge that the impact of extradition on her 2-year-old son would "obviously be absolutely devastating" and that "the impact of extradition on her daughter, mother and grandmother would also be deeply upsetting".

6 In the "Analysis" section of his judgment the district judge said the following:

> "The fact remains that she has two children in the UK and other close family, including her mother. She, I accept, is the primary care giver to the youngest child and is close to the oldest. I must give primary consideration to the effect of surrender on those, in particular, Matt… is a proper and reasonable inference to conclude that separation would be distressing to him and, perhaps to a lesser extent, Wiktoria."

7 The district judge went on to observe that it is a:

> "…sad reality of not just extradition proceedings, but domestic proceedings, when custody is imposed there is an impact on children. The question for this court is what is the extent of that hardship and does it so militate against the public interest as to outweigh it?"

8 The grammar of para.71 becomes, if I may say so, a little confused, but the effect of what the district judge said, in my judgment, is that there was no evidence that the effect on the children would be more than the inevitable. He noted that they are healthy children and are developing well and in the event of surrender would be cared for by a combination of the appellant's mother and partner. The district judge did not anticipate that provision of care in this way would be disruptive. He anticipated that the two-year-old boy would be brought up by a combination of his father and grandmother.

9 The district judge concluded thus:

> "When the court is faced with the prospect of splitting a family in the event of surrender, it is always with a heavy heart that it does so. The law requires me to assess the impact surrender will have on the family and give paramountcy to the harm caused thereby to the children. In this case, there is no evidence that the children will suffer severe harm. The RP is a fugitive and although on the face of the matters in the warrant are not very serious she, in fact, received a considerable custodial sentence which remains to be served. The Polish court's assessment of seriousness must be afforded proper respect by this court. As such, I find no sufficiently compelling factors that outweigh the public interest …"

10 I think there is a typographical error in the district judge's judgment. I think it must mean outweigh the public interest in surrender.

> "For the reasons articulated above, surrender is an proportionate interference with the Article 8 ECHR rights of RP and her family."

11 Mr Hepburne Scott, for the appellant, reminds me that in an extradition case the interests of the child are a primary consideration. He submits that the criminality in this case was at the bottom end of the scale, involving, as it did, a series of frauds involving a total of some £1,200 and that the effect of extradition on the members of the extradictee's family is a weighty consideration. He says that in the light of the district judge's acceptance of the fact that extradition would be "absolutely devastating" on the appellant's infant son, that is a very weighty consideration indeed. Taking into account also the fact that the appellant had already served many months on electronically monitored curfew, the age of the offences and the settled life of the appellant with her partner and children, he says the district judge ought to have concluded that the appellant's extradition was not necessary and proportionate.

12 In response, Catherine Brown, for the respondents, emphasises the quality of the district judge's analysis. She points out that he took account of all relevant factors. In particular, she says, the judge was right in his approach to the level of seriousness of the offending, noting that it was not the most serious in the criminal calendar, but that it is not for a UK judge to second guess the sentencing policy of other Member States. She does not dispute the fact that the appellant's partner and children would suffer emotional distress and hardship as a result of her extradition, but argues that the reference to the effect being "absolutely devastating" is perhaps overgenerous to the appellant. She submits that, given the propriety of the judge's approach and the weight of competing factors in the Article 8 balance, it cannot be said that the district judge's conclusions were wrong.

13 In *HH v Italy* , Lord Judge said this at para.132:

> "When resistance to extradition is advanced, as in effect it is in each of these appeals, on the basis of the article 8 entitlements of dependent children and the interests of society in their welfare, it should only be in very rare cases that extradition may properly be avoided if, given the same broadly similar facts, and after making proportionate allowance as we do for the interests of dependent children, the sentencing courts here would nevertheless be likely to impose an immediate custodial sentence:"

14 Mr Hepburne Scott argues that the corollary of that observation of Lord Judge is that it would be less rare for extradition to be refused if the case were one in which an English court would not impose an immediate custodial sentence. That submission seems to me to have some force, but it is important to recognise that Lord Judge was not there laying down some test, he was instead articulating the appropriate approach to the balancing exercise which the courts are required to undertake.

15 In *Celinski* , Lord Thomas, then Lord Chief Justice, said this:

> "…the public interest in ensuring that extradition arrangements are honoured is very high. So too is the public interest in discouraging persons seeing the UK as a state willing to accept fugitives from justice… the decisions of the judicial authority of a Member State making a request should be accorded a proper degree of mutual confidence and respect… Although personal factors relating to family life will be factors to be brought into the balance under Article 8 , the judge must also take into account that these will also form part of the matters considered by the court in the requesting state in the event of conviction."

16 I take all those observations into account.

17 As Mr Hepburne Scott rightly submits, the criminality in this case whilst serious, was a long way from the top of the scale. The offences occurred many years ago. Each of those factors is relevant to the decision the district judge had to take, but none of them is decisive.

18 In my judgment, however, there is one exceptional feature of this case. That exceptional feature lies in the district judge's conclusion that the effect of extradition on this 2-year-old child would be "absolutely devastating". That was a conclusion supported by the evidence of both the appellant and her partner. In my judgment, given that finding of the district judge, the proper conclusion which he ought to have reached was that the scales in this particular case had

been tipped in favour of refusing extradition. In my judgment, his decision to the opposite effect was wrong and, in those circumstances, I allow this appeal.

MR HEPBURNE SCOTT: I am grateful, my Lord. Would your Lordship wish us to draw up the relevant order?

MR JUSTICE GARNHAM: If you would, please.

MR HEPBURNE SCOTT: Yes, certainly, my Lord.

MR JUSTICE JEREMY BAKER: Thank you both for your assistance.